

JEFFREY A. KAISER, ESQ. [SBN 160594]  
SEAN P. WORSEY, ESQ. [SBN 215807]  
LISA J. ESPADA, ESQ. [SBN 202975]  
**LEVIN SIMES KAISER & GORNICK, LLP**  
44 Montgomery St., 36<sup>th</sup> Fl.  
San Francisco, California 94104  
Telephone (415) 646-7160  
Facsimile (415) 981-1270

Attorneys for Plaintiff  
James E. Mayo

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

JAMES E. MAYO,  
Plaintiff,  
vs.  
A. O. SMITH CORPORATION, et al.,  
Defendants.

) Case No. CV 08 0058 MMC  
)  
) **DECLARATION OF SEAN P.**  
) **WORSEY IN SUPPORT OF**  
) **PLAINTIFF'S MOTION FOR**  
) **REMAND**  
)  
) **Date: February 29, 2008**  
) **Time: 9:00 a.m.**  
) **Room: Courtroom 7, 19<sup>th</sup> Floor**  
)  
) **HON. MAXINE M. CHESNEY**  
)

I, Sean P. Worsey, do hereby declare,

1. I am an attorney at law, licensed to practice in the courts of the State of California. I am associated with the law firm of Levin Simes Kaiser & Gornick, LLP, attorneys of record for plaintiff James Mayo. I have personal knowledge of the matters stated herein and if called as a witness, could competently testify thereto.

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1       2. Plaintiff James Mayo ("plaintiff") brought an action for damages in the Superior Court  
2 of California in and for the County of Alameda, after receiving a diagnosis of mesothelioma in  
3 August 2007. Plaintiff's action was filed on November 21, 2007. Mesothelioma is a rapidly fatal  
4 disease, known to be caused by exposure to asbestos. In his State Court action, Plaintiff named thirty-  
5 eight (38) defendants including various manufacturers and suppliers of asbestos containing materials  
6 to which he exposed during his long work history.  
7

8       3. On January 4, 2008, a single defendant, Foster Wheeler, LLC ("Foster Wheeler") filed  
9 a Notice of Removal under 28 U.S.C. Section 1442(a)(1), on the alleged grounds that Foster Wheeler  
10 was acting under an officer or agency of the United States.

11       4. On January 15, 2008, Plaintiff resolved his case against Foster Wheeler, the removing  
12 defendant, and received a stipulation from this party to remand the case to the Superior Court of  
13 California, Alameda County. Attached hereto as **Exhibit A** is a true and correct copy of the executed  
14 stipulation.  
15

16       5. All defendants appeared at the deposition of James Mayo, which just concluded on  
17 January 10, 2007.  
18

19       6. Mr. Mayo's mesothelioma is a terminal and incurable form of cancer. Prior to the  
20 filing of the removal, Plaintiff was in the process of obtaining medical records and the declaration of  
21 Plaintiff's treating physician, in anticipation of filing a motion for a preferential trial date. Plaintiff  
22 has prepared to petition the Superior Court to set a trial date within 120 days, based upon C.C.P  
23 Section 36 (d), which allows terminally ill plaintiff like Mr. Mayo to obtain a speedy trial in a  
24 California court.  
25  
26  
27  
28

1       7. Because there is no equivalent procedure in Federal Court to obtain a preferential trial  
2 date, Plaintiff here will likely not survive to see his case come to trial, should this case not be  
3 promptly remanded to the State Court where it belongs.

4

5       I declare under penalty of perjury under the laws of the State of California and of the United  
6 States that the foregoing is true and correct and based on my personal knowledge. Executed  
7 this 22 nd day of January, 2008, at San Francisco, California.

8

9

10       

11       SEAN P. WORSEY

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JAMES E. MAYO,

Plaintiff,  
vs.

A.O. SMITH CORPORATION, et al.,

Case No.: C 08 0058 EMC

STIPULATION BY PLAINTIFF AND  
DEFENDANT FOSTER WHEELER TO  
REMAND CASE TO ALAMEDA  
COUNTY SUPERIOR COURT

### Defendants

1. On January 4, 2008, defendant FOSTER WHEELER LLC filed its Notice of Removal of Alameda County Superior Court Case No. RG-07-357726, purportedly under 28 U.S.C. 1442 (a) (1).

2. Plaintiff JAMES MAYO and defendant FOSTER WHEELER LLC hereby do stipulate to immediately remand this case to the Superior Court of California, County of Alameda, and request that this Court grant an order to remand.

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## Exhibit A

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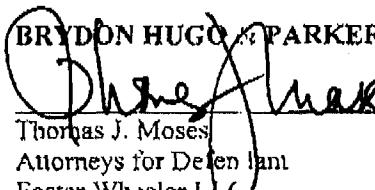
1  
2 IT SO STIPULATED:

3 Dated: January 18, 2008

LEVIN SIMES KAISER & GORNICK LLP

4 By   
5 Lisa J. Espada  
6 Attorneys for Plaintiff  
7

8 Dated: January 15, 2008

9 By   
10 BRYDON HUGO PARKER  
11 Thomas J. Moses  
12 Attorneys for Defendant  
13 Foster Wheeler LLC  
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